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July 25, 2022

Honorable James R. Cho, U.S.M.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Via: ECF

Re: Benbow v. Feeley, et al.,
17-cv-06457-ERK-JRC

Dear Judge Cho,

I represent Plaintiff and write to further elaborate on a question posed by the Court during today's hearing in regards to the use of the now vacated plea and associated allocution. A review of the Certificate of Disposition Dismissal ("Certificate") precludes the Court from relying upon or in any way using the allocution against Plaintiff in this matter.

The very terms of the Certificate states that "THE ARREST AND PROSECUTION SHALL BE DEEMED A NULLITY AND THE ACCUSED SHALL BE RESTORED, IN CONTEMPLATION OF THE LAW, TO THE STATUS OCCUPIED BEFORE THE ARREST AND PROSECUTION." Pl. Ex. 18. (emphasis in the original). By its very terms, the Certificate makes clear that Plaintiff is restored to the position prior to his arrest, which includes being placed in the position before his coerced allocution. This pre-arrest status invalidates the plea, allocution, and any statements regarding possession of a gun.¹ As such, the allocution is a nullity and may not be used against Plaintiff in this matter or any other matter. To use the allocution against Plaintiff would violate the very terms of the Certificate of Disposition Dismissal, as well as the Appellate Divisions' holding as it would necessarily mean that the Court was not restoring Plaintiff to his pre-arrest status. Further, it would adjudge the Plaintiff guilty with its attending consequences, notwithstanding the fact that the Courts have exonerated him.

We thank the Court for its attention to this matter.

Respectfully submitted,
s/Aymen A. Aboushi
Aymen A. Aboushi, Esq.

Cc: All counsel of record via ECF

¹ It is still dispositive that Plaintiff did not admit to possessing a gun during his interaction with the Defendants or displaying a gun during his interaction with the Defendants, as he has consistently maintained.